

1 IN THE UNITED STATES DISTRICT COURT  
 2 FOR THE NORTHERN DISTRICT OF OKLAHOMA

3 STATE OF OKLAHOMA, ex rel, )  
 4 W.A. DREW EDMONDSON, in his )  
 capacity as ATTORNEY GENERAL )  
 5 OF THE STATE OF OKLAHOMA, )  
 et al. )  
 6 )  
 Plaintiffs, )  
 7 )  
 V. ) No. 05-CV-329-GKF-SAJ  
 8 )  
 )  
 9 TYSON FOODS, INC., et al., )  
 )  
 10 Defendants. )

11  
 12  
 13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

14 FEBRUARY 20, 2008

15 PRELIMINARY INJUNCTION HEARING

16 VOLUME II

17  
 18 BEFORE THE HONORABLE GREGORY K. FRIZZELL, Judge

19  
 20 APPEARANCES:

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JOHN BERTON FISHER

RECROSS-EXAMINATION

BY MR. GEORGE

Q. Dr. Engel, have you ever spoken with anyone at George's as to why they might be moving poultry litter to the Delta?

A. I have not.

Q. Were you just speculating about why, one possible reason as to why that might be occurring?

A. Well, certainly the literature would all seem to indicate that, you know, you lose the economic value after you transport this more than a few tens of miles, including the Rausser-Dicks materials that you provided.

Q. You have no idea why they transferred it to the Delta, do you?

A. Well, most likely it's either because --

Q. Sir, do you know why they transferred it to the Delta?

A. I don't know exactly why George's does that.

MR. GEORGE: Okay, thank you.

THE COURT: You may step down. The plaintiff may call its next witness.

MR. NANCE: Your Honor, State would call Dr. Gordon Johnson.

GORDON VERNON JOHNSON

Called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

THE COURT: State your full name for the record,

1 please.

2 THE WITNESS: Gordon Vernon Johnson.

3 THE COURT: Mr. Nance, you may inquire.

4 MR. NANCE: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. NANCE:

7 Q. You've told the Court your name. Would you tell the Court  
8 what you have done in your professional career, particularly at  
9 the Oklahoma State University?

10 A. I served as extension soil nutrient management specialist  
11 and director of the soil, water and forage testing laboratory.

12 Q. And for what period of time were you at Oklahoma State  
13 University?

14 A. I was there from 1977 through 2004.

15 Q. Were you, at least in 2003 and '4, the regent's professor  
16 of soil science at the university?

17 A. Yes.

18 Q. Let me ask you to look at Exhibit No. 84 and ask if that  
19 is your curriculum vitae current through March of 2003?

20 A. Yes.

21 Q. And other than the fact of your retirement in 2004, is  
22 there any change that needs to be made to that?

23 A. No.

24 Q. Have you testified as an expert witness in court cases  
25 before?

1 understanding of the animal waste management plans that were  
2 being used in the Illinois River Watershed in forming your  
3 opinions; right?

4 A. Yes, that's right.

5 Q. Now, despite your lack of detailed knowledge of the  
6 regulatory programs in place in the Illinois River Watershed,  
7 it's your opinion, isn't it, Dr. Johnson, that the laws of  
8 Oklahoma and Arkansas should be changed to employ this absolute  
9 threshold that you are proposing to the Court?

10 MR. NANCE: Objection as irrelevant, Your Honor.

11 A. I believe you asked the same question in my deposition --

12 THE COURT: I'm sorry, just one second, let me go over  
13 that question. I'd like to know the answer. Overruled.

14 A. I believe my response in deposition was that to the extent  
15 the laws provide excessive waste application that will result  
16 in increased risk of pollution of the surface waters of the  
17 state, I believe they ought to be changed.

18 Q. (By Mr. McDaniel) And your understanding -- or do you  
19 understand, Dr. Johnson, that currently the law in both  
20 Oklahoma and Arkansas in the Illinois River Watershed does not  
21 employ the strict 65 STP threshold that you're asking this  
22 Court to adopt?

23 A. That's correct.

24 MR. NANCE: Objection, calls for a legal conclusion.

25 THE COURT: Overruled.

1 A. That's correct, it allows for that application of  
2 excessive waste application, but it doesn't require it.

3 Q. (By Mr. McDaniel) Okay. So you are advocating to this  
4 Court by adopting your rule to actually change the law of the  
5 two states in the watershed; right?

6 A. I'm suggesting that to the extent that the existing laws  
7 promote excessive waste application to the detriment of the  
8 surface waters, they ought to be changed.

9 Q. Can you give me a yes or no answer to my question?

10 A. I don't think so.

11 Q. Well --

12 THE COURT: I think we've plowed this ground.

13 MR. MCDANIEL: Thank you, Your Honor.

14 THE COURT: No pun intended.

15 Q. (By Mr. McDaniel) Let's look at exhibit Defendants'  
16 Preliminary Injunction Exhibit No. 4, and it should come up  
17 before you, Dr. Johnson, on the screen.

18 MR. MCDANIEL: If I can approach the witness, please,  
19 Your Honor?

20 THE COURT: You may.

21 Q. (By Mr. McDaniel) Dr. Johnson, if you need to see the  
22 full documents, they're in this folder.

23 A. That would be great.

24 Q. Whatever is your preference.

25 A. Do you know where it is in this folder?